Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of USTelecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Regulations	)	WC Docket No. 12-61

REPLY COMMENTS OF VERIZON

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INTRODUCTION AND SUMMARY

USTelecom's Petition seeks discrete and targeted forbearance from legacy regulations that are unnecessary and impede investment in next-generation networks. The Commission should grant the Petition. There is clear support for the requested relief, which is required by the terms of the Act. No commenter rebuts the core fact that the rules and regulations identified by USTelecom are outdated and counterproductive. Rather, some commenters distort the limited nature of the relief sought, conflate distinct regulatory issues, and raise procedural claims that are wrong. Such knee-jerk opposition to any relaxation of needless requirements – regardless of how costly, how dated, or how unnecessary those requirements may be – perpetuates unnecessary burdens on providers that can slow the transition to next-generation broadband services and platforms. It also flies in the face of the Obama Administration's clear call for comprehensive regulatory reform and the Commission's own stated intention to scrub its books of unnecessary rules and regulations.

I. THERE IS NO BASIS TO RETAIN LEGACY REGULATIONS THAT IMPEDE THE TRANSITION TO NEXT-GENERATION NETWORKS AND OFFER NO COUNTERVAILING BENEFITS

Forbearance from the rules identified in the Petition and clarification as to the scope of legacy regulations would promote the IP transition, help accelerate efforts to deliver new services to consumers, and eliminate unnecessary regulation. Supporters of the Petition are correct to highlight that the "communications industry has changed dramatically since the implementation of the legacy telecommunications regulations." *Cincinnati Bell* at ii. The record further demonstrates that the regulations identified in the Petition are not necessary today, and "contribut[e] effectively nothing to the public interest." *CenturyLink* at 3. Those commenters that reflexively oppose these efforts get both the law and the policy wrong.[1] Contrary to their unsupported claims, the requested forbearance is discrete, pro-consumer, and long overdue.

Category 10, Section 214 Service Discontinuance Approval Requirements. The section 214 service discontinuance rules were established years ago to protect consumers from a complete loss of service at a time when consumers typically had only a single service provider. This limited regulatory safeguard was focused properly on a complete loss of service, and is not a tool to micromanage the technology used by providers to deliver service. Providers routinely update their networks with new technology without triggering any discontinuance requirements. The Commission's discontinuance rules

[1] New Networks Institute provides a grossly inaccurate and misleading report on Verizon's accounting and operating practices that has no relevance to the Petition or any of the legacy rules at issue. This irresponsible attack is clearly false. This Report is littered with baseless allegations about Verizon's "destruction of the public switched telephone networks (PSTN) and harm to the economy…." *New Networks Institute Report* at 4. Contrary to the Report, Verizon has annually invested $16.5 billion in technology infrastructure focused on next generation networks consistent with the Commission's stated goals and the objectives of the National Broadband plan. The Report's allegations about tax policy are similarly false: Verizon paid out billions of dollars in federal, state, and local taxes over 2008-2010, and the Report offers no evidence of any improper tax avoidance. *New Networks Institute Report* at 8.

simply do not apply to a provider migrating consumers from a legacy platform to a successor technology. No commenter offers any legal analysis suggesting that the discontinuance rules apply to a provider transitioning service to a next-generation network, or presents any legitimate claims that the Commission has authority to dictate the technologies that a provider employs to serve its customers. *COMPTEL* at 9-11; *Broadview* at 19-22.

Nevertheless, to avoid any argument that a successor technology results in a service that is so different that the section 214 discontinuance obligation might be triggered, the Commission should conclude that to the extent the rules apply at all, forbearance is warranted. This would ensure that the Commission's discontinuance policy, designed to protect consumers, does not harm them now.[2] The expansion of legacy discontinuance rules now to situations when consumers receive services through a successor technology would retard the deployment and availability of next-generation networks and delay roll-out of more robust services. This would be directly contrary to the Commission's objective to transition consumers to more advanced networks. Slowing this transition and impeding the exact type of investment sought by the Commission ultimately works against consumers' interest.

Some commenters' repeated efforts to malign investment and call into question the motives of carriers pouring billions of dollars into next-generation networks run counter to clear Commission policy. *See CALTEL* at 12-15. The Commission has repeatedly taken steps to facilitate investment in new infrastructure and services that

[2] *See AT&T Inc. v. FCC*, 452 F.3d 830, 837 (D.C. Cir. 2006) (holding that the Commission must act on forbearance requests even when "the petition seeks forbearance from uncertain or hypothetical regulatory obligations").

benefit consumers and operators.[3] One commenter's attempt to manipulate statements made in a state-level quality of service hearing only underscores that opponents are trying to exploit this proceeding to draw attention to their own regulatory agenda. *CALTEL* at 12-15. Specifically, CALTEL mischaracterizes Verizon's testimony before the California PUC concerning the potential role of fiber solutions to help consumers with "chronic copper network problems" as evidence of a purported "Forced Migration strategy." *CALTEL* at 14. In reality, this testimony only demonstrates that Verizon is seeking to be responsive to consumer concerns, in part, by moving subscribers to a newer, more reliable network, fully consistent with the Commission's own objectives. There is nothing nefarious – and certainly nothing relevant to the Commission's discontinuance rules – about deciding to provision a customer's services over state-of-the art platforms, something providers have always had the flexibility to do.

Indeed, the Commission itself has already concluded that consumers reap the benefits of new platforms, and customer usage and subscribership decisions demonstrate that end users have shown a clear preference for next-generation multi-function broadband networks. Nonetheless, NASUCA seeks to discount these clear market trends, and selectively offers a limited set of statistics it claims supports the view that consumers, or a subset of consumers, are somehow adversely affected by migrating to a next-generation network, and that consumers do not view next-generation networks as substitutes to traditional voice services. *NASUCA* at 12-19. Neither contention withstands scrutiny.

[3] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692 ¶ 78 (2011) ("*Connect America Fund Order*"); FCC, *Connecting America: The National Broadband Plan* at xi (Mar. 16, 2010) (recognizing that next generation network deployment has been "[f]ueled primarily by private sector investment and innovation").

Specifically, NASUCA suggests that USTelecom exaggerated the role of "cord-cutters" as evidence of market competition, by citing statistics that nearly 70% of households have wireline service. *NASUCA* at 13. NASUCA ignores that its own cited statistics also note that one out of six households with wireline service receive all or almost all calls on wireless phones.[4] Further, the suggestion that total aggregate wireline statistics demonstrate market power of ILEC legacy services is a dated and flawed proposition. NASUCA fails to consider the growing number of consumers that have wired service through a non-ILEC provider. Moreover, as Chairman Genachowski noted earlier this year, approximately 31% of wireline consumers use VoIP from a next-generation network for residential phone service.[5] In 2010, VoIP subscriptions increased by 22%, while retail switched access lines decreased by 8%.[6] NASUCA also avoids altogether the widespread adoption of new technologies like email, text messaging, and Skype, which reduce households' reliance on traditional voice services.

Even with respect to cord cutting, NASUCA manipulates the CDC's statistics to suggest that wireless is only viewed as an economic substitute for wireline services by younger Americans. *NASUCA* at 13-14. This is counter to the economic literature that has demonstrated that wireless service is an economic substitute for wireline service, and

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[4] *See* Stephen J. Blumberg and Julian V. Luke, Center for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January – June 2011* 1 (Dec. 21, 2011) ("CDC Wireless Substitution Study"), http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201112.pdf.

[5] *See The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice over Internet Protocol Service Providers and Broadband Internet Service Providers*, Report and Order, 27 FCC Rcd 2650, 2719 (2012) (Statement of Chairman Julius Genachowski).

[6] Industry Analysis and Technology Division, FCC, *Local Telephone Competition: Status as of December 31, 2010* 2 (Oct. 2011) ("Local Telephone Competition Report"), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310264A1.pdf.

accordingly, acts as a market mechanism to "discipline the price of telephone service."[7] A full review of CDC's own statistics also reveal that American households across all age brackets are cutting the cord to rely exclusively on wireless service, often next-generation wireless offerings, not just young Americans. CDC Wireless Substitution Study at 2, 8. While younger demographics may have embraced cord-cutting earlier, the trend lines show this phenomena cutting across all age groups.[8] The same CDC statistics relied upon by commenters to suggest that older Americans eschew next-generation networks actually show that wireless substitution is growing *fastest* among those over 65. CDC Wireless Substitution Study at 8. In light of a more robust review of the CDC's and Commission's statistics, any claims of exaggeration belong to opposing commenters, not USTelecom.[9]

Category 9, Part 51 Network Change Notices. Commenters respond with similar hyperbole to USTelecom's limited request that the Commission streamline the Part 51 procedures to eliminate duplicative network change filings and facilitate the speedy transition to newer broadband platforms. The Part 51 short term notification process

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[7] *See* Jeffrey Eisenach and Kevin Caves, Navigant Economics, *The Effects of Liberalizing Price Controls on Local Telephone Service: An Empirical Analysis* 6-9 (Feb. 2012), *available at* http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2006594_code827975.pdf?abstractid=2006594&mirid=1. *See also* William Taylor and Harold Ware, NERA Economic Consulting, *The Effectiveness of Mobile Wireless Service as a Competitive Constraint on Landline Pricing: Was the DOJ Wrong?* 1 (Dec. 2008), *available at* http://www.nera.com/extImage/PUB_DOJ_Effectiveness_Wireless_Service_0109_FINAL.pdf ("[D]ata on price trends and substitution of wireless for landline services show that mobile services currently represent an effective competitive constraint on landline access pricing").

[8] *See* CDC Wireless Substitution Study at 8. In three years, from January-June 2008 to January-June 2011, the percentage of adults living in wireless-only households has increased by 49% in the 18-24 years bracket; by 62% in the 25-29 years bracket; by 71% in the 30-34 years bracket; by 121% in the 35-44 years bracket; by 134% in the 45-64 years bracket; and by 182% in the 65 years and over bracket. *Id.*

[9] The New York Public Service Commission's concerns about low-income consumers access to next generation networks are valid, and subject to the Commission's ongoing Lifeline proceeding. *NYPSC* at 1-2. The NYPSC's related concerns about potential gaps where wireless service might not be available are not directly relevant here, as relief is only sought if a provider offers a consumer access to successor service. *Id.* at 3.

requires carriers to provide notice of network changes to the affected customer, on its website, and then file a duplicative notice to the Commission, which then seeks public comment on the network change. The Petition seeks to streamline these procedures by eliminating the unnecessary Commission filing and publication and relying on the notices provided on a network operator's web sites and directly to interconnecting carriers. This would help facilitate the rapid rollout of new networks, while ensuring that affected parties continue to receive notice in advance of the network changes that may affect them.

Opponents provide no evidence that the overlapping procedures required under today's rules do anything to serve the public interest, protect consumers, or maintain just, reasonable, and non-discriminatory rates. *COMPTEL* at 9. These rules merely add delay and uncertainty to the exact type of investment the Commission seeks to facilitate on consumers' behalf, the transition to next generation broadband networks. *See Connect America Fund Order*, 26 FCC Rcd at 17692 ¶ 78.

Some commenters invoke doomsday references to the IP transition and copper retirement policies that do not withstand scrutiny. *CALTEL* at 12-15; *Broadview* at 10-11. As the USTelecom petition makes clear, affected CLECs and the public would continue to receive notice in advance of network changes that could affect them. The Petition would only relieve the provider of the obligation to then file the network change with the Commission. Likewise, CLECs would continue to have access to voice-grade channels over fiber on an unbundled basis in these overbuild areas, just like they do today. But in these instances and the many more instances involving network changes

unrelated to copper loop retirement, the outdated regulations targeted by USTelecom's Petition merely add superfluous notice procedures that result in delay and expense.

Commenters opposing Part 51 relief also rely on misleading factual allegations that the Commission's public notices include more "critical information" about network changes than the notices that carriers otherwise provide to CLECs and the public. *COMPTEL* at 13. In practice, the opposite is true: the Commission's notices are heavily reliant on the underlying website and CLEC notices and provide only a cursory amount of detail about the network change.[10] The Petition also correctly highlights that affected CLECs receive direct notice from the carrier making the network change "long before the Bureau's release of its public notice." *Petition* at 58. To the extent that carriers require additional information about an upcoming network change, they are able to contact directly the network provider performing the change to get that information.

In addition, the California PUC's related request to maintain the Commission-initiated notices because state procedures are linked to the timing of the Commission notices is contrary to precedent. *CPUC* at 10. The Commission may not maintain a regulatory requirement if there is no federal need, even if those requirements "may produce information helpful to state commissions."[11] In any event, the notices that will continue to be provided by carriers in advance of the relevant network changes will be available to the state commissions and to the other providers operating within their states,

[10] *Compare Wireline Competition Bureau Short Term Network Change Notification Filed by CenturyLink*, Public Notice, Rep. No. NCD-2105 (WCB Jan. 20, 2012) (stating only that a wire center change would occur in two Missouri wire centers*) to* CenturyLink Network Disclosure Announcement No. 11-004 (June 29, 2011), *available at* http://www.centurylink.com/wholesale/docs/11-004_Wire_Center_Boundary_Change_Columbia_East_to_ColumbiaSunrise.pdf (providing detailed address information and guidance to CLECs accessing unbundled loops).

[11] *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order, 23 FCC Rcd 7302, 7321 ¶ 32 (2008) ("*AT&T Cost Assignment Forbearance Order*").

and there is no reason to believe that such other carriers will hesitate to raise any concerns they may have. Similarly, California rules could trigger the timing of any state obligations to the unaffected CLEC or website notices under the Commission's rules.

Category 4, USOA, Part 32. The Commission should forbear from the Part 32 accounting rules for all price cap carriers. The outdated obligation to maintain separate regulatory accounting books serves no role in today's regulatory environment. Commenters rightfully highlight the substantial costs of Part 32 compliance, which apply to only a subset of competitors. *Cincinnati Bell* at 10. Indeed, the substantial costs to incorporate anachronistic Part 32 requirements into Verizon's new accounting systems underscore that these old outdated rules continue to impose new costs on providers. *See Verizon* at 11.

Opposing commenters fail to identify a single current federal need for Part 32 data from price cap carriers, yet seek to require carriers to maintain Part 32 books indefinitely for hypothetical or other non-federal uses. The Commission has explained that it cannot maintain a reporting requirement "in anticipation of a speculative need for the information at some point in the future."[12] Because there are no current federal needs for Part 32 data, opposing commenters largely resort to identifying potential *future* needs for data in the special access, universal service, intercarrier compensation, or separations proceedings. *NASUCA* at 26, *Sprint Nextel* at 5, *CPUC* at 7, *COMPTEL* at 21. All are speculative, backward-looking, and irrelevant to this proceeding. In each of those areas,

[12] *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 USC §160(c)*, Memorandum Opinion and Order, 23 FCC Rcd 18483, 18488 ¶ 10 (2008) ("*Recordkeeping and Reporting Forbearance Order*").

the Commission has taken steps to sever the ties between its policies and actual cost-based regulation, and, thus, to obviate the need for regulatory accounting obligations.

For example, the Commission's recent *Connect America Fund Order* eliminated any potential need for carrier cost data for universal service and intercarrier compensation reform. Specifically, the Commission found that price cap carriers' universal service support will no longer be based on actual costs, and decided to eliminate all carrier-to-carrier charges for intercarrier compensation. *Connect America Fund Order*, 26 FCC Rcd at 17723 ¶ 151, 17905-14 ¶¶ 742-759. Yet, NASUCA now claims that Part 32 data could be required for calculations of high-cost loop and interstate common line support, or could assist in developing a forward-looking cost broadband model. *NASUCA* at 2. Because the Commission froze all high-cost support for price cap carriers, there is no potential basis to suggest Part 32 data would be needed for that purpose, and NASUCA fails to offer any reasonable explanation how legacy embedded ILEC costs could serve any role in the development of a technologically neutral forward-looking wireline broadband model. *Connect America Fund Order*, 26 FCC Rcd at 17723 ¶ 151, 17735 ¶ 187.[13]

With respect to special access, COMPTEL and Sprint Nextel recycle discredited arguments that Part 32 and other cost-based metrics may be necessary to evaluate the reasonableness of special access rates. *COMPTEL* at 21, *Sprint Nextel* at 6-7. As a threshold matter, it appears that these attempts to retain Part 32 data are nothing more than efforts to revisit the past Commission decision to forbear from ARMIS reporting

[13] Sprint Nextel's claimed current universal service and intercarrier compensation needs for Part 32 data are also invalid. Sprint references only limited waiver provisions, pending appeals, and the fact that multi-year intercarrier compensation transition has just begun. *Sprint Nextel* at 5. None offer a compelling federal need to maintain burdensome and outdated accounting regulations.

requirements, which is procedurally barred here. *Recordkeeping and Reporting Forbearance Order*, 23 FCC Rcd at 18487 ¶ 7.[14] Regardless, the Commission's existing policy to "allow[] competition, rather than regulation, to determine prices for interstate access services," has proven successful, as special access prices have steadily fallen, eliminating any need for reform, let alone a return to monopoly era rate-of-return principles.[15] It is also well-established that the Commission need not determine the service-specific costs of special access services to evaluate whether special access rules should be modified.[16] To that end, commenters ignore the substantial non-ARMIS, non-Part 32 data the Commission has requested in its special access review.[17]

Even if the Commission desired to use cost-based metrics in its special access review, neither COMPTEL nor Sprint Nextel provides any explanation as to how the Commission could use Part 32 data to reasonably allocate joint and common costs to special access services, or to specific geographic area where those services are provided, in a non-arbitrary manner to provide meaningful analytic results. Moreover, the Commission may not maintain wasteful Part 32 regulations merely because those obligations may one day have some purpose if the Commission were to endorse a particular party's regulatory agenda. *Recordkeeping and Reporting Forbearance Order*, 23 FCC Rcd at 18488 ¶ 10.

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[14] Sprint Nextel also suggests that the Commission has relied on "Part 32 and other cost-related rules to assess the reasonableness of special access rates," yet the 2005 decision referenced relies upon ARMIS data, not Part 32 data, in its analysis. *Sprint Nextel* at 6 (citing *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 2006 ¶ 29 (2005).

[15] *Commission Adopts Pricing Flexibility and Other Access Charge Reforms*, News Release, CC Docket No. 96-262, Rep. No. 99-33 at 1 (CCB Aug. 5, 1999).

[16] *See* Comments of Verizon and Verizon Wireless, WC Docket No. 05-25 (Jan. 19, 2010).

[17] *See Data Requested in Special Access NPRM,* Public Notice, 25 FCC Rcd 15146 (WCB 2010).

Similarly, commenters concede that there is a long-standing freeze of the "jurisdictional separations category relationships and cost allocation factors," and, thus, there is no need for Part 32 data today for separations policy. *See CPUC* at 8. Nonetheless, some parties claim that Part 32 data is necessary for separations purposes because "it is unknown at this point what reports may still be required to implement [separations] reforms." *CPUC* at 8. Again, given the lack of any current federal regulatory need, commenters' request to retain Part 32 for a future hypothetical use must be rejected.[18] Moreover, there is nothing to "reform." The Commission has already forborne from the separations rules with respect to AT&T, Verizon, and the former Qwest properties. *See, e.g., AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307 ¶ 11. The remaining (though declining quickly) voice lines served by these companies wireline units represents the substantial majority of all ILEC lines still in service. The separations process is irrelevant to these and other price cap carriers under incentive regulation. And even if the Commission could retain Part 32 regulations for state separations or other state cost assignment needs (which it cannot), state regulatory regimes for most lines are also now based on incentive regulation – or the states have deregulated. *NASUCA* at 22, 23-25; s*ee AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7320-21 ¶ 32 (holding that the Commission cannot avoid forbearance based on state regulatory needs). This data is as useless in state price cap and deregulatory environments as it is on the federal level.

[18] The calls for use of Part 32 also seek to re-litigate prior Commission actions: commenters seemingly desire cost allocations rules that have *already* been eliminated for AT&T, Verizon, and former Qwest properties, not Part 32 data. *See, e.g., AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307 ¶ 11. Those demands are procedurally barred.

There also is no proper future use for Part 32 data for separations purposes. Even if this data were available and separations reform was a meaningful exercise, commenters offer no rational basis to use cost-based metrics and Part 32 data to allocate costs between federal and state jurisdictions and between regulated and unregulated services in a legitimate and non-arbitrary manner.[19] Modern multi-function networks render jurisdiction-based cost allocations "more arbitrary and thus less reasonable." *Wireline Broadband Order,* 20 FCC Rcd at 14853 ¶ 142.

Likewise, the suggestion that the Commission's prior accounting forbearance decisions are *dependent* upon the continued availability of Part 32 data distorts the facts. *COMPTEL* at 19-20, *Sprint Nextel* at 6. In addressing prior recordkeeping and reporting forbearance requests, the Commission did not consider Part 32 relief because petitioners did not *seek* such relief. *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307-08 ¶ 12. Now that the question is before the Commission, it should forbear from Part 32. The Commission has found that "there are sufficient sources of such [accounting] data … that provide accounting information that may be needed by the Commission in the future." *Recordkeeping and Reporting Forbearance Order*, 23 FCC Rcd at 18489 ¶ 12. For example, carriers will continue to be required to follow Generally Accepted Accounting Principles ("GAAP") or a successor standardized accounting regime subject to Securities and Exchange Commission scrutiny, and must adhere to the Sarbanes-Oxley Act and Foreign Corrupt Practices Act, which requires detailed records reflecting transactions and disposition of assets. Opposing commenters fail to provide any evidence that this accounting data would be inadequate for any future Commission

[19] Comments of Verizon, CC Docket No. 80-286 (Aug. 22, 2006); Comments of USTelecom, CC Docket No. 80-286 (Apr. 5, 2012).

need. They also ignore the fact that the Commission has never requested *any* data from Verizon under the terms of those prior decisions and resulting compliance plans, let alone specific Part 32 data. *COMPTEL* at 21.

Additional efforts to retain the Part 32 property records rule only underscore that opponents seek to block any relief from burdensome and unnecessary recordkeeping and paperwork requirements. Opposing commenters concede that they have no knowledge of how these records have been used in more than a decade, yet demand their retention for no apparent federal need or purpose. *NASUCA* at 30. There is no basis to continue to require ILECs to generate unnecessary information for all plant accounts.

Category 2, ONA/CEI Rules. The Commission has already eliminated *Computer Inquiry* requirements for broadband Internet access services and for enterprise broadband services.[20] USTelecom now seeks forbearance from those remaining unbundling requirements for legacy narrowband services. Two parties seek to block elimination of these relics of monopoly era regulation because those parties may currently incorporate some narrowband basic services in a portion of their operations. *AICC* at 2-4, *Full Service Network* at 3-9. Neither commenter offers much explanation as to why alternative providers or platforms are not available to deliver the same services. Commenters cite only two legacy dialtone services – "stutter dialtone" and "AIN triggers" – apparently unbundled by some carriers as a result of the requirements and incorporated into these commenters' "voicemail, directory assistance, operator services," and alarm service offerings. *Full Service Network* at 5; *AICC* at 2-4. These two things are

[20] *See e.g., Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) ("*Wireline Broadband Order*"), *aff'd Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007); *Sprint Nextel Corp. v. FCC*, 508 F.3d 1129 (D.C. Cir. 2007).

standard narrowband service products that rely on old technology. In Verizon's experience, however, ONA/CEI unbundling requests are, at best, extremely rare. As far back as 2001, Verizon had gone approximately six years since the last such request in 1995, and we have not been able to identify a subsequent request.[21]

In addition, even if these parties do find it convenient to purchase these two narrowband services from former Regional Bell Operating Companies (RBOCs), there is no connection between the continued availability of these services in particular areas and the ONA/CEI rules. Even where applicable (the rules apply only to RBOCs, not even the larger community of ILECs), these requirements do not force carriers to offer particular services forever, and the requirements do not guarantee that carriers subject to them must enable particular business models in perpetuity. But if there is a business case to sell the services, there is no reason to believe that these things would not continue to be available outside the prescriptive *Computer Inquiry* unbundling regime.

More fundamentally, this opposition, like the original ONA/CEI rules, is largely based on the "assumption that the incumbent LEC wireline platform [is] the only network platform available to enhanced service providers." *Wireline Broadband Order*, 20 FCC Rcd at 14856 ¶ 3, 14877 ¶ 43. But alarm services and voicemail products like those provided by AICC and Full Service Network are offered today by a host of providers using narrowband inputs from carriers – such as IP, cable, wireless, and other platforms – separate and distinct from any legacy *Computer Inquiry* mandate. For example, there are more than 2 million FiOS Digital Voice customers now served by Verizon. FiOS Digital

[21] *See* Comments of Verizon Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, at 6-7 (Apr. 16, 2001).

Voice is a VoIP service that is compatible with standard home security systems.[22] Likewise, home security systems offered by independent providers are compatible with cable VoIP services.[23] And the enhanced narrowband services identified by Full Service Network and AICC – voicemail, directory assistance, operator services, and alarm systems – are available outside of RBOC territories (again, the rules apply only to RBOCs),[24] as well as using dialtone inputs provided by CLECs.[25] In this environment, there is no basis to retain prescriptive rules that apply to a few among many competitors – *i.e.*, only to a subset of ILECs – with respect to legacy voice services that are rapidly being displaced by next generation technologies.

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[22] Verizon Residential Phone Support, *FiOS Digital Voice and Home Security Systems*, http://www22.verizon.com/residentialhelp/phone/general+support/fios+voice+service/fvs/121207.htm (last visited Apr. 20, 2012).

[23] *See, e.g.*, ADT, *Questions About VoIP*, http://www.adt.com/home-security/learning-center/security-topics/technology-security/questions-about-voip (last visited Apr. 24, 2012) ("We can tell you which VoIP/Digital Phone service providers in your local area meet the necessary characteristics to become a Qualified Managed Facility Voice Network (MFVN). Those providers that qualify are included in ADT's policy and are rated as an acceptable primary method of transmitting alarm signal to ADT's monitoring centers."); NextAlarm, *NextAlarm Monitoring Services*, http://info.nextalarm.com/services (last visited Apr. 24, 2012) ("With NextAlarm.com's patented ABN technology, you can finally have your home security system reliably monitored over your broadband Internet connection."); SafeMart, Get Our Award-Winning Alarm Monitoring Service Using VOIP Technology, http://www.safemart.com/services/voip-alarm-monitoring.htm (last visited Apr. 24, 2012) ("SafeMart offers professional VOIP alarm monitoring for as little as $14.95 per month. All you need is our Broadband Module connected to your alarm system and you'll be transmitting signals over the internet.").

[24] Full Service Network itself admits that it competes not only with Verizon, but also "other ILECs" providing service to "thousands of businesses and residential customers across Pennsylvania." *Full Service Network* at 2, *see also* Press Release, SureWest, *SureWest Continues to Enhance Its Broadband Offerings with the Launch of Digital Phone – A VoIP Product*, (March 10, 2008) *available at* http://ir.surw.com/phoenix.zhtml?c=130929&p=irol-newsArticle&ID=1240603&highlight=alarm (The Digital Phone, SureWest's new VoIP product, features "home alarm system compatibility.")

[25] *See* Integra Telecom, Traditional Voice Services, http://www.integratelecom.com/services/Traditional_Voice.php (last visited Apr. 24, 2012) (detailing "Integra's feature-rich Business Lines service, all of the standard features you need to run an efficient business are available. Simple lines are also available for alarm, point-of-sale and other similar applications.").

Category 17, Prepaid Calling Card Reports. One commenter objects to eliminating the prepaid calling card reports that serve no regulatory purpose today. The opposition is based solely on allegations that some calling card companies have misled consumers about the number of minutes purchased. *NASUCA* at 23. This argument makes no sense. The reporting requirement at issue here addresses the jurisdictional nature of calls, not consumer issues. NASUCA offers no nexus between the relief sought and the allegation, because none exists. The Commission's calling card reporting requirements are not necessary. Moreover, NASUCA's attempt to manufacture a need for the calling card reporting requirement in this instance is illustrative of its approach to the Petition. NASUCA objects to every single one of the USTelecom forbearance requests merely as a matter of reflex and in many instances without contributing any meaningful analysis.

II. PROCEDURAL OBJECTIONS TO THE PETITION ARE MERITLESS

The Commission should reject a handful of procedural arguments raised by some commenters. These claims are irrelevant, erroneous, or both.

A. USTelecom has Standing to File the Petition

Suggestions that USTelecom lacked "standing" to file the petition can quickly be dismissed, because there is no Section 10 standing requirement. *COMPTEL* at 2-4. As COMPTEL acknowledges, Section 10(c) permits any "class of telecommunications carriers" to "submit a petition to the Commission requesting that the Commission exercise the [Section 10(a) forbearance] authority … with respect to … those carriers[] or any service offered by [those] carriers." 47 U.S.C. § 160(c). Here, USTelecom, a trade

association representing "service providers and suppliers for the telecom industry,"[26] seeks forbearance from outdated requirements applicable to such providers.[27] The Commission has recognized the propriety of such requests under Section 10, granting industry-wide relief in response to forbearance petitions filed by trade associations.[28] Moreover, there is no requirement, in the statute or elsewhere, that the relief sought be limited to the petitioner or petitioners.[29]

Ultimately, standing-related arguments are moot in any case. Section 10(a) directs the Commission to "forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets," when the relevant criteria are met – irrespective of whether any petition has been filed *at all*. Given the facts set out by USTelecom and the record developed in this docket, this provision requires the Commission to forbear from the regulations at issue, and would so require even in the absence of the petition.[30]

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[26] *See* USTelecom, Who We Are, *available at* http://www.ustelecom.org/who-we-are (last visited Apr. 24, 2012).

[27] NASUCA suggests incorrectly that the Petition does not apply to the "regional Bell operating companies." *NASCUA* at 10. The Petition clearly details the class of carriers for which forbearance is sought, which explicitly the Verizon and other "regional Bell operating companies."

[28] *See, e.g.*, *Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations*, Memorandum Opinion and Order, 14 FCC Rcd 3092 (1999) (granting CTIA petition seeking forbearance from service provider local number portability requirements for broadband commercial mobile radio service providers).

[29] *See, e.g.*, *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (forbearing from application of Equal Access Scripting requirements for three BOCs, when only one had filed forbearance petition).

[30] Nor is there any merit to COMPTEL's reaching argument that doctrines of standing developed for Article III courts preclude USTelecom from petitioning here. *COMPTEL* at 2. Even if judicial doctrines regarding standing applied here, COMPTEL's cited precedent makes clear that the facts presented by this matter *permit* standing. The Supreme Court, in the case cited by COMPTEL, noted the "participation of individual members" is not deemed necessary when "the association seeks a declaration,

B. The Petition Provides Sufficient Evidence

The Commission must also reject suggestions that USTelecom has failed to provide sufficiently granular market data to warrant forbearance. *See, e.g., COMPTEL* at 3, *Broadview* at 18-19, *Ad Hoc* at 5. Commenters making these arguments misunderstand the core basis for USTelecom's request, which is that the outdated regulations at issue serve no purpose irrespective of specific competitive conditions. Moreover, even to the extent such conditions mattered, opponents have misread the evidence in the docket, Commission precedent, and the nature of the relief sought.

As an initial matter, opponents are wrong to suggest that USTelecom's request may only be granted in the presence of vibrant competition. *See COMPTEL* at 18, *NASUCA* at 12-20. As the Petition explained, continued enforcement of the antiquated regulations at issue is inimical to the public interest, would not protect reasonable rates and terms, and would disserve consumers *in any event*. *Petition* at 3-9. These regulations simply have no place in the contemporary communications landscape, irrespective of the degree of competition in specific granular markets.

Regardless, the evidence set forth clearly demonstrates sufficient competition at the national level to warrant forbearance. The Petition established that fewer than half of American households obtain voice service from an ILEC; that nearly one-third of households have cut the cord and rely on wireless voice service; that cable providers

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injunction, or some other form of prospective relief," because in which cases the relief, if granted, will "inure to the benefit of those members of the association…." *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977). Indeed, in *Hunt*, the Court unanimously held that "if the [association involved in the case] were a voluntary membership organization – a typical trade association – its standing to bring this action as the representative of its constituents would be clear…." *Id.* at 342. In any event, the language cited by COMPTEL applies only to *judicial* fora, where individual members may not participate if they are not parties to the litigation. It has no relevance to an industry-wide notice-and-comment administrative proceeding such as this one, where (as evidenced by Verizon's and other member companies' participation) USTelecom's members can participate as parties and thereby protect their interests.

serve 20% of the residential voice market and offer voice service to 93% of American households; and that approximately 3% of users rely on over-the-top VoIP service. *Petition* at 4-5 & App. B. It showed that 98% of households are in zip codes with access to three or more competing providers, and that 90% have a choice of eight or more competitive providers. *Petition*, App. B at 3. Attempts to belittle this competition fall flat: For example, NASUCA argues that wireless options should be disregarded because they offer mobility while wireline services do not. *NASUCA* at 14. But while this fact may render wireline services poor substitutes for *wireless* services, it says nothing about the degree to which wireless services can be substitutes for *wireline* offerings. Likewise, NASUCA's claim that consumers do not view VoIP offerings as substitutes for traditional telephony is directly refuted by Commission precedent finding that "interconnected VoIP services increasingly are viewed by consumers as a substitute for traditional telephone service."[31] Commenters offer no basis why additional company-specific data would be necessary to support the Petition given clear trends.

Moreover, there is no basis in Commission precedent for suggestions that forbearance of the type requested here requires detailed, geographically granular market data. Broadview *et al*., criticize what they call the "general, high level" competitive analysis set out in the Petition. *Broadview* at 18. The Commission has, however, granted nationwide relief, based on nationwide market conditions, on multiple occasions. For example, it granted nationwide forbearance when it relieved BOCs from broadband

[31] *NASUCA* at 12; *The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting To Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, Report and Order, 27 FCC Rcd 2650, 2679 ¶ 69 (2012). *See also Connect America Fund Order* at 17669 ¶ 9 (noting that "the [intercarrier compensation] system is eroding rapidly as consumers increasingly shift from traditional telephone service to substitutes including Voice over Internet Protocol (VoIP), wireless, texting, and email").

access obligations set out under Section 271[32] and when it relieved various ILECs from requirements relating to enterprise broadband services.[33] These decisions, moreover, were upheld by reviewing courts.[34] The D.C. Circuit has ruled explicitly with respect to forbearance that the "the statute imposes no particular mode of market analysis or level of geographic rigor." *Earthlink, Inc. v. FCC*, 462 F.3d 1, 16 (D.C. Cir. 2006).

The relief sought by USTelecom also differs dramatically from that sought in the market-specific forbearance proceedings. Ad Hoc contends that the petition fails to address competition in the enterprise market, and thus warrants summary dismissal under the *Qwest Phoenix* precedent.[35] But the language Ad Hoc cites in this regard related specifically to "whether [the Commission could] forbear from statutory unbundling obligations with respect to UNE loop and transport elements used to provide service to mass market and enterprise market customers." *Qwest Corp. Petition*, 25 FCC Rcd at 8635 ¶ 27. Here, USTelecom is not seeking forbearance from substantive requirements governing the enterprise market specifically. Rather, the requirements at issue in the petition relate to recordkeeping and similarly generally applicable duties. Given this focus, there simply is no need for data specific to one subset of the market.

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[32] *See Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c),* Memorandum Opinion and Order, 19 FCC Rcd 21496 (2004).

[33] *See, e.g., Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007).

[34] *See, e.g., Ad Hoc Telecom. Users Committee v. FCC*, 572 F.3d 903 (D.C. Cir. 2009); *EarthLink, Inc. v. FCC*, 462 F.3d 1 (D.C. Cir. 2006).

[35] *See Ad Hoc* at 4-5, citing *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622, 8635 ¶ 28 (2010) ("*Qwest Corp. Petition*").

III. CONCLUSION

For these reasons, the Commission should grant USTelecom's forbearance request.

Respectfully submitted,

By: */n/*

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